

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CODY BENSON,

Defendant.

CASE NO. CR21-5222 BHS

ORDER

This matter is before the Court on Defendant Cody Benson's motion to continue the trial date and pretrial motions due date, Dkt. 31.

On July 7, 2021, a grand jury charged Benson with four counts of wire fraud in violation of 18 U.S.C. § 1343. Dkt. 1. On July 19, Benson appeared before Magistrate Judge J. Richard Creatura and pleaded not guilty to all these charges. Dkt. 8. Following this hearing, Judge Creatura released Benson on an appearance bond. Dkts. 8, 9.

Benson has previously filed four unopposed motions to continue the trial date and pretrial motions due date, Dkts. 11, 17, 21, 25, and the Court granted all those motions, Dkts. 12, 18, 23, 26. Under the current case schedule, a jury trial is set to commence on

1 October 10, 2023, and the parties' pretrial motions are due by September 10, 2023. Dkt.
2 26.

3 Benson again moves to continue the trial date and pretrial motions due date.¹ Dkt.
4 31. Benson contends that another continuance is warranted because she does not
5 presently have sufficient time to assist her attorneys in preparing a defense. *Id.* at 1–2.
6 According to Benson, this is because “she is acting as her son’s full-time caretaker while
7 he recovers” “from a life-threatening MRSA^[2] infection” and while her “husband is on
8 active duty in the military.” *Id.* at 1–2. Benson also contends that “discovery demands for
9 evidence material to [her] defense are still pending.” *Id.* at 2–3. In particular, Benson
10 claims that “the defense asked the Government to produce complete copies of her hiring
11 and personnel records” from the Washington State Attorney General’s Office, “including
12 her job application and offer of employment, employment contract, performance
13 evaluations, disciplinary records (if any, and complete personnel/human resources file.”
14 *Id.* at 2. She finally asserts that “the current motions and trial date is unexpectedly
15 challenging for co-counsel Colin Fieman” because “the defender office budgetary work
16 and fiscal year 2024 planning between now and early October is more complicated and
17 time consuming than had been anticipated and will limit the time and focus Mr. Fieman
18 would typically devote to trial preparation.” *Id.* at 3.

21 ¹ Benson also failed a waiver of her right to a speedy trial to a date on or before April 20,
2024. Dkt. 32.

22 ² Methicillin-resistant *Staphylococcus aureus*.

1 The Government opposes this motion. Dkt. 33. It contends that Benson’s “first
2 proffered reason concern[ing] a sick family member . . . is far too lacking in specifics to
3 be good cause for a continuance.” *Id.* at 2. It also argues that, contrary to Benson’s
4 assertion otherwise, there are no pending discovery demands. *Id.* at 3–4. The Government
5 asserts that “it already produced all [the requested] records in its possession” and that,
6 “[i]f the [Washington Attorney General’s Office] locates and turns over additional
7 records, the government will promptly share them with Benson.” *Id.* at 3–4. The
8 Government finally contends that Mr. Fieman’s anticipated budgetary work does not
9 amount to a good reason for a fifth continuance of this matter. *Id.* at 4.

10 Benson replies that, [i]n regard to the health of [her] adult son, her husband is a
11 battalion commander and frequently away from home, as he is now.” Dkt. 34 at 2. She
12 asserts that they “have no other family in Indiana³ and their son is presently unable to
13 care for himself.” *Id.* She further contends that her son’s “doctors anticipate his condition
14 will improve and full-time care will not be needed in a couple of months” and that her
15 “husband will be able to request leave from the military if that timeline is too optimistic.”
16 *Id.* Regarding her discovery requests, Benson asserts that the Government “has a duty to
17 preserve, collect, and disclose evidence from cooperating law enforcement agencies” and
18 that its “last update to the defense was on August 16, when it notified the defense that a
19 federal agent would be coordinating with the AG’s office to locate the [requested]
20 evidence.” *Id.* at 1–2.

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22 ³ Benson lives in Indiana. Dkt. 31 at 1.

1 The Court concludes that the ends of justice served by a short continuance
2 outweigh the best interest of the public and the defendant in a speedy trial. *See* 18 U.S.C.
3 § 3161(h)(7). Although Benson could have made an earlier request for the evidence that
4 she currently seeks, there appears to have been a delay in either obtaining or confirming
5 the existence of evidence that is possibly relevant to her defense. Additionally, Benson is
6 currently caring for her adult son's medical needs and her husband, who is away from
7 home serving in the military, will be able to assume responsibility of whatever medical
8 care is needed in a couple months.

9 Therefore, it is hereby **ORDERED** that Benson's motion to continue, Dkt. 31, is
10 **GRANTED**. The trial date is continued to **January 2, 2024**. The pretrial motions
11 deadline is continued to **December 1, 2023**.

12 Dated this 1st day of September, 2023.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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